IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1929/2007
(Madan Lal Vs. State of Rajasthan)

Date of Order : 11/12/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ramesh Purohit for the petitioner
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

Notice for final disposal is accepted by the public prosecutor. With the consent of learned counsel for the parties, the matter is finally heard and decided at the admission stage.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 19.11.2007 passed by Judicial Magistrate, First Class, Jahajpur, district Bhilwara (for short 'the trial court' hereinafter) summoning the petitioner by a non-bailable warrant declaring him absconder and initiating proceeding under Section 82-83 Cr.P.C.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that neither the summon was served on the petitioner nor bailable warrant has been served on him and without there being execution of bailable warrant, the trial court straightway issued non-bailable warrant against the petitioner as also declared him as absconder and initiated proceeding under Section 82-83 Cr.P.C. Learned counsel for the petitioner has placed on record various order sheets of the trial court.

On perusal of the various order sheets of the trial court, it prima-facie appears that co-accused Ratan Singh appeared before the trial court and thereafter failed to appear and non-bailable warrant has been issued against him, despite non-bailable warrant he did not appear and therefore, proceeding under Section 82-83 Cr.P.C. was initiated against him. To this extent, the order of the trial court may be justified. But so far as the petitioner is concerned, bailable warrant was not served on him and without service of the bailable warrant, straightway non-bailable warrant has been issued and declared the petitioner absconder for which requirement of Section 82-83 Cr.P.C. has not been fulfilled.

In the circumstances, therefore, the order impugned qua the petitioner cannot sustain and is liable to be set aside.

Learned counsel for the petitioner submits that the petitioner would surrender before the trial court and move a

regular bail on 8.1.2008.

In this view of the matter, the criminal misc. petition is allowed and the order impugned dated 19.11.2007 qua the present petitioner Madan Lal is set aside. The proceeding under Section 82-83 Cr.P.C. qua the petitioner also stands quashed and non-bailable warrant issued against the petitioner shall not be executed. The petitioner shall surrender and appear before the trial court on 8.1.2008 and if he surrenders and appear before the trial court and moves a regular bail, the trial court shall consider and decide the bail application on the same day in accordance with law.

(H.R.PANWAR),J.

rp

S.B.Cr. Misc. Stay Petition No. 1666/07

In

S.B. Cr. Misc. Petition No. 1929/2007

Date of order : 11.12.2007

HON'BLE MR.H.R.PANWAR,J.

Mr. Ramesh Purohit for the petitioner.

Mr. Ashok Upadhyay, P.P.

Since the criminal misc. petition itself has been allowed, the stay petition stands disposed of.

(H.R.PANWAR), J.

rp